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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,265	10/30/2000	Marc Iacovelli	8209.506	6648

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09/08/2003

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EXAMINER

RHEE, JANE J

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 09/08/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

ASIR

Advisory Action	Application No. 09/698,265	Applicant(s) IACOVELLI ET AL.	
	Examiner Jane J Rhee	Art Unit 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-18.

Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: see attachment

ADVISORY ACTION

Repeated Rejections

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Primeau (5482759).

Primeau discloses a molded flexible mat having a raised peripheral lip provided on side edges of the molded mat (figure 1 sides of the mat), a first area contained within the peripheral lip, the first area having a recessed bottom surface and a plurality of raised protrusion extending from the bottom surface thereby providing a texturized surface (figure 1), at least one third area having a substantially smooth bottom surface (figure 1 number 22), the at least one third area provided within the first area of the mat and adjacent to the texturized surface pattern (figure 1), and at least one wear plate fixed upon the smooth bottom surface of at least one third area of the molded mat (figure 1 number 26a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 and 11-13, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Primeau (5482759).

Lu discloses a molded flexible mat having a raised peripheral lip provided on side edges of the molded mat (figure 1 the sides of the mat), a first area contained within the peripheral lip (figure 1 lower third of the mat and upper third of the mat), the first area having a recessed bottom surface and a plurality of raised protrusions extending from the bottom surface thereby providing a texturized surface (figure 1 lower third of the mat and upper third of the mat), at least one third area having a substantially smooth bottom surface (figure 1 area inbetween the protrusions) and at least one wear plate fixed upon the smooth bottom surface of at least one third area of the molded plate (figure 1 lower third of the mat). Lu discloses that the second area contained within the peripheral has a recessed floor and a plurality of elongated parallel ridges protruding from the recessed floor (figure 1 middle of the mat). Lu discloses that the second area further comprises a plurality of raised bumps on the recessed floor in between the parallel ridges (figure 1 middle of the mat). Lu discloses that the first area of the molded mat generally covers an upper section and a lower section of a substantial floor area of the mat (figure 1 upper third and lower third of the mat) and the second area of the molded mat generally covers a middle section of the substantial floor area of the mat (figure 1 middle section). Lu discloses at least one wear plate comprises a heel plate located in the lower section of the mat (figure 1 any portion of lower third of the mat). Lu discloses that at least one

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wear plate comprises a toe plate located in the upper section of the mat (figure 1 any portion of upper third of the mat). Lu discloses at least one wear plate comprises a toe plate located in the upper section of the mat and a heel plate located in the lower section of the mat (figure 1 any portion of the upper third section and any portion of the lower third portion). Lu discloses that at least one wear plate is surrounded at its edges by a contoured wall, raised and extending up from the bottom surface (figure 1 the side walls of the mat). Lu discloses at least one wear plate comprises a toe plate located in the upper section of the mat and a heel plate located in the lower section of the mat (figure 1 any portion of the upper third and lower third portion of the mat). Lu discloses that the floor mat further comprises a backside of the molded mat, the backside having at least one gripping section for gripping the vehicle floor, the gripping section having a plurality of outwardly extending protrusions (figure 2). Lu discloses that at least one gripping section located on the backside of the mat opposite the wear plate fixed to the front surface of the mat (figure 2). Lu disclose at least one third area is contained within a surrounding wall raised and extending up from the bottom surface (figure 1 inbetween the protrusion in the lower third).

Lu fail to disclose at least one third area provided within the first area of the mat and adjacent to the texturized surface pattern. Primeau teaches at least one third area provided within the first area of the mat and adjacent to the texturized surface pattern for the purpose of providing a removable portion that can be cleanable out of the car (col. 1 lines 29-31).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Lu with at least one third area provided within the first area of the mat and adjacent to the texturized surface pattern for the in order to provide a removable portion that can be cleanable out of the car (col. 1 lines 29-31) as taught by Primeau.

3. Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu (Des 422256) and Primeau in view of Wen-Hwang (5215348).

Lu and Primeau discloses the floor mat described above. Lu fails to disclose that the wear plate comprises a metal plate having a texturized surface pattern. Wen-Hwang teaches that the wear plate is made of hard plastic for the purpose of increasing the serviceable life of the footpad (col. 2 lines 50-52). However, one of ordinary skill in the art would have recognized that hard plastic could be replaced with metal since they obtain similar durability in nature. It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided the wear plate a metal plate, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice absence of showing unexpected results. In re Leshin, 125 USPQ 416.

4. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu, Primeau, Wen Hwang in view of Bailey.

Lu, Primeau, Wen Hwang discloses the floor mat described above. Lu, Primeau, Wen Hwang fail to disclose that the metal plate is fixed upon the smooth bottom surface

of at least one third area of the molded mat by a plurality of rivets passing through the floor mat. Bailey teaches a plurality of rivets passing through the floor mat for the purpose of to help hold the grill in place (col. 3 lines 45-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Lu, Primeau, Wen Hwang with a plurality of rivets passing through the floor mat in order to help hold the grill in place (col. 3 lines 45-47).

Response to Arguments

5. Applicant's arguments filed 8/15/03 have been fully considered but they are not persuasive.

In response to applicant's argument that Primeau fail to disclose a wear plate fixed upon the bottom surface of the molded mat, Primeau does disclose a wear plate in figure 1 number 26a. A wear plate is broadly defined by the examiner wherein almost anything can be described as a wear plate just as long as use is applied to the area, it may be defined as a wear plate, therefore, in figure 1 number 26a the plate is used to collect fluids or contaminants that adhere to the driver's feet can also be a wear plate since the driver's feet utilizes the area. As to the wear plate being fixed upon the bottom surface of the molded mat, the term fix is defined as to place securely; make stable or firm¹ therefore since the wear plate 26a is placed securely in the recessed of area 22 it is fixed upon the bottom surface of the molded mat (figure 1).

¹ *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that Bailey does not teach rivets that pass through the floor mat as recited in claims 16-18, Bailey does teach rivets, col. 3 lines 45-47 that pass through the floor mat as recited in claims 16-18, the rivets pass through the slots of 23' in figure 1b which has the wear plate fixed to the bottom surface of the floor mat.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Jane Rhee
August 26, 2003



HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

9/2/03